

5032. Adulteration and alleged misbranding of evaporated apples. U. S. * * * v. George Appleby and Charles W. Appleby (Appleby Bros.). Pleas of guilty to counts 1, 3, 5, 7, 9, and 11 of information. Fine, \$15 and costs. Remaining counts nol-prossed. (F. & D. No. 6768. I. S. Nos. 9153-h, 11517-k, 11010-k, 11519-k, 11516-k, 12575-k, 11545-k.)

On March 11, 1916, the United States attorney for the Western District of Arkansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against George Appleby and Charles W. Appleby, trading as Appleby Bros., Fayetteville, Ark., alleging shipments from the State of Arkansas by said defendants, in violation of the Food and Drugs Act, on or about April 17, 1914, into the State of Texas; on September 2, 1914, into the State of Oklahoma; on August 31, 1914, into the State of Oklahoma; on September 10, 1914, into the State of Oklahoma; on September 24, 1914, into the State of Oklahoma; on September 18, 1914, into the State of Kansas; and on November 25, 1914, into the State of Tennessee, of quantities of evaporated apples which were adulterated and misbranded. The shipments, except that on November 25, 1914, were labeled in part: "Our Best Quality Sliced Evaporated Apples." The shipment on November 25, 1914, was labeled in part: "10 Ounces Net Weight New Crop Evaporated Sliced Apples * * *" and "One Pound New Crop Evaporated Sliced Apples * * *."

Analyses of samples of the article in all these shipments, except the shipment on November 25, 1914, by the Bureau of Chemistry of this department, showed that it contained an excessive amount of moisture.

Adulteration of the article, except that in the shipment on November 25, 1914, was alleged in counts 1, 3, 5, 7, 9, and 11 of the information for the reason that a certain substance—to wit, water—had been mixed and packed with said article, so as to reduce, lower, and injuriously affect its quality and strength, and had been substituted, in whole or in part, for evaporated apples, which said article purported to be.

Misbranding of the article in all of the shipments, except that on November 25, 1914, was alleged in counts 2, 4, 6, 8, 10, and 12 of the information, for the reason that it was a partially dried apple product, containing an excessive amount of moisture, and was offered for sale under the distinctive name of another article, to wit, evaporated apples; and misbranded for the further reason that the following statement appearing on the labels aforesaid, to wit, "Evaporated Apples," was false and misleading in that it indicated to purchasers thereof that said article consisted of evaporated apples; and for the further reason that it was labeled, "Evaporated Apples," so as to deceive and mislead purchasers thereof into the belief that the article consisted of evaporated apples, when, in truth and in fact, it did not, but did consist of, to wit, a partially dried apple product, containing an excessive amount of moisture.

Analysis of sample of the article shipped on November 25, 1914, by the Bureau of Chemistry of this department showed an average weight of 8.90 ounces for 9 of the cartons labeled 10 ounces, or 11.0 per cent shortage, and an average weight of 14.07 ounces for 9 cartons labeled 1 pound, or 12.1 per cent shortage.

Misbranding of this article was alleged in count 13 of the information, for the reason that the following statements regarding it and the ingredients and substances contained therein appearing on the labels aforesaid, to wit, "One Pound" and "10 Ounces Net Weight," were false and misleading, in that they indicated to purchasers thereof that the boxes contained 1 pound and 10 ounces, respectively, of the said article of food; and for the further reason that the packages containing the same were labeled, "One Pound" and "10 Ounces

Net Weight," so as to deceive and mislead purchasers into the belief that the said packages contained 1 pound and 10 ounces, respectively, of the said article of food, when, in truth and in fact, the said packages did not, but did contain a less amount thereof.

On June 19, 1916, the defendants entered pleas of guilty to counts 1, 3, 5, 7, 9, and 11 of the information, and the court imposed a fine of \$15 and costs. Counts 2, 4, 6, 8, 10, 12, and 13 were nol-prossed.

CARL VROOMAN, *Acting Secretary of Agriculture.*